

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 12, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP1936-CR**

**Cir. Ct. No. 2009CF275**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**SAMUEL A. TEAGUE,**

**DEFENDANT-APPELLANT.**

---

APPEAL from orders of the circuit court for Marathon County:  
GREGORY B. HUBER, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Samuel Teague appeals an order denying his motion for sentence modification, in which he argued: (1) the ten-year sentence is

excessive; (2) the circuit court lacked the authority to impose a consecutive sentence; (3) he is entitled to additional sentence credit; and (4) the sentencing court relied on erroneous information provided by the State. The circuit court issued an order denying the motion, concluding it was earlier deemed denied because the court did not act on the motion within ninety days pursuant to WIS. STAT. § 973.19 (2015-16).<sup>1</sup> Teague filed a motion for reconsideration, arguing the ninety-day restriction did not apply because the circuit court ordered briefing on the postconviction motion. The circuit court denied the motion for reconsideration, and Teague appeals that order as well. We affirm the orders.

¶2 Teague entered a no-contest plea to the delivery of cocaine, second or subsequent offense, as a repeater. The circuit court withheld sentence and placed Teague on probation for seven years, concurrent with other sentences Teague was serving for drug offenses. An administrative law judge (ALJ) later revoked Teague's probation as well as the extended supervision from the other cases based on Teague's admission that he was at a tavern and consumed alcohol. The ALJ found insufficient evidence to support two other allegations—i.e., that Teague possessed a firearm and that he lied to investigating officers. Based on the probation revocation, Teague was returned to the circuit court for sentencing. The circuit court imposed a sentence of six years' initial confinement and four years' extended supervision consecutive to the prison terms Teague was serving for violating the conditions of his extended supervision in the other cases.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶3 A threshold question is whether Teague's motion was properly deemed denied after ninety days pursuant to WIS. STAT. § 973.19. Although the motion invoked that statute, the motion itself was not filed within ninety days of the date of sentencing. In addition, Teague's trial counsel filed a notice of intent to seek postconviction relief and ordered transcripts. Therefore, the motion should have been treated as a motion under WIS. STAT. RULE 809.30(2)(h). *See* WIS. STAT. § 973.19(1)(b). This court extended the time for Teague to file a motion under RULE 809.30, and the motion was timely filed pursuant to that order. Under RULE 809.30(2)(i), that motion would have been deemed denied after sixty days. However, this court extended the time for deciding the postconviction motion to the date the order was entered. Therefore, we conclude Teague is entitled to review of the merits of his motion.

¶4 Teague has not established that the ten-year sentence is excessive. The court could have imposed a sentence of fifteen years' initial confinement and five years' extended supervision. The ten-year sentence is well within the maximum sentence and is therefore presumptively not excessive. *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Teague had six prior convictions for delivery of cocaine and was on extended supervision when he committed this offense. The circuit court appropriately focused on Teague's character as shown by his failure to comply with the conditions of his probation, including a long list of violations in the revocation summary; his "flimsy" employment history; and his poor behavior while incarcerated.

¶5 Citing *Drinkwater v. State*, 69 Wis. 2d 60, 230 N.W.2d 126 (1975), Teague argues the sentencing court lacked authority to impose a consecutive sentence following revocation of probation. *Drinkwater* was based on a previous version of the statute that has since been modified to allow a consecutive sentence.

*See State v. Cole*, 2000 WI App 52, ¶5, 233 Wis. 2d 577, 608 N.W.2d 432. The current version of WIS. STAT. § 973.15(2)(a) now expressly authorizes the court to impose a consecutive sentence under these circumstances.

¶6 Teague's claim that he is entitled to additional sentence credit is based on his assertion that his sentence was necessarily a concurrent sentence. Because the circuit court properly imposed a consecutive sentence, and Teague was given credit for his jail time on the extended supervision sentences, he is not entitled to dual credit. *See State v. Boettcher*, 144 Wis. 2d 86, 88, 100, 423 N.W.2d 533 (1988).

¶7 Finally, Teague has not established that the sentence was based on erroneous information. To be entitled to relief, he must show that the information was false and that the sentencing court actually relied on it. *See State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1.

¶8 Teague first asserts the prosecutor misled the circuit court into believing Teague would serve only seventy-five percent of his incarceration time. However, the prosecutor merely informed the court that the term of extended supervision must be not less than twenty-five percent of the term of confinement under WIS. STAT. § 973.01(2)(d). Therefore, even though the penalty enhancers added to the maximum term of confinement would have added up to seventeen and one-half years, the court could impose no more than fifteen years of initial confinement because the maximum term of extended supervision was five years. The prosecutor correctly stated the law, and his statements did not suggest Teague would serve less than the full amount of any initial confinement the court would impose. What is more, the record contains no indication the circuit court relied on this particular statement when it sentenced Teague.

¶9 Teague contends the prosecutor misstated Teague's role in the delivery of cocaine and in an offer to sell a pound of marijuana. The prosecutor's arguments were based on testimony from the preliminary hearing suggesting Teague was the ultimate source of the drugs, regardless of whether he directly handed them to the informant. The informant said the person who gave him the drugs told him that "Little Mo" [Teague] would sell him a pound of marijuana. Teague was charged as a party to a crime. The sentencing court's comments about Teague's involvement in the transaction were consistent with his role as party to the crimes. Teague has not demonstrated that the sentence was based on any discrepancy regarding Teague's role in the sale of cocaine.

¶10 Teague next argues the circuit court was misled about Teague's employment history. Teague and his attorney corrected the prosecutor's statement that Teague did not have a job while he was on probation, detailing various places Teague had worked. Nonetheless, the sentencing court appropriately characterized Teague's employment history as "flimsy." During the three years Teague was on probation, he worked for only two to three months. Teague has not demonstrated that the circuit court relied on any inaccurate information regarding his employment.

¶11 Teague further contends the prosecutor incorrectly asserted Teague was charged with sixty-three crimes. Teague has not established that this information was false or that the circuit court utilized that assertion in its sentencing decision. After the prosecutor made that statement, the court inquired about the number of convictions and, in its sentencing decision, made reference only to the convictions, not the arrests or dismissed offenses. Therefore, Teague has not established the sentencing court's reliance on that information regardless of whether it is false.

¶12 Finally, Teague challenges the prosecutor's statements regarding an incident at the bar where Teague was alleged to have handled a gun that was ultimately used in a homicide. Teague's attorney pointed out that the charge of possession of a firearm by a felon was dismissed and the allegation was not substantiated at Teague's revocation hearing. The circuit court allowed the prosecutor to argue information about that incident based on the revocation summary, but it ultimately did not place any weight on the allegation, expressly stating it lacked the necessary information to conclude that Teague was responsible in any way for the shooting at the bar.

*By the Court.*—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

